

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~STRIKEOUT~~

NEW LANGUAGE: UNDERLINE

(O-2004-48)

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

ADOPTED ON \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 14, ARTICLE 3, DIVISION 7, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 143.0710, 143.0715, 143.0720, 143.0730, 143.0740, AND 143.0750; AND BY REPEALING SECTION 143.0760, ALL RELATING TO AFFORDABLE HOUSING DENSITY BONUS REGULATIONS.

**§143.0710 Purpose of Affordable Housing Density Bonus Regulations**

The purpose of these regulations is to provide increased residential densities to developers who guarantee that a portion of their residential *development* will be available to *low income, very low-income*, or senior households or to moderate income condominium owners. The regulations are intended to materially assist the housing industry in providing adequate and affordable shelter for all economic segments of the community and to provide a balance of housing opportunities for *low income, very low-income*, and senior households, and moderate income condominium owners throughout the City. It is intended that the affordable housing *density* bonus and any additional development incentive be available for use in all residential developments, ~~using criteria and standards provided in the Progress Guide and General Plan, as defined by the San Diego Housing~~

~~Commission~~. It is also intended that these regulations implement the provisions of California Government Code Sections 65915 through 65918.

**§143.0715 When Affordable Housing Density Bonus Regulations Applies**

- (a) This division applies to any residential *development* of five or more ~~dwelling units~~dwelling units where an *applicant* proposes *density* beyond that permitted by the applicable zone in exchange for a portion of the total ~~dwelling units~~dwelling units in the development being reserved for *low* or *very low-income* households, ~~or for senior citizens or qualified residents through a written agreement~~moderate income condominium owners.
- (b) An *applicant* proposing *development* as provided in Section 143.0715(a) shall be entitled to a *density* bonus as provided in Sections 143.0720 and 143.0730 and ~~may~~shall be granted ~~an additional~~ a development incentive as provided in Sections 143.0740 and 143.0750.

**§143.0720 Affordable Housing Density Bonus Agreement**

- (a) An applicant shall be entitled to a *density* bonus for any residential *development* for which an agreement is entered into by the *applicant* and the ~~Chief Executive Officer of the San Diego Housing Commission~~ as provided in Section 143.0720(b).
- (b) The *density* bonus agreement shall include the following provisions:
  - (1) ~~With respect to rental housing affordable units~~Number of *Density* Bonus units provided and Level of Affordability:
    - (A) At least 20 percent of the pre-bonus units in the *development* will be affordable, including an allowance for

utilities, to *low-income* households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size; or

(B) [No change.]

(C) At least 50 percent of the pre-bonus units will be available to *senior citizens; or ~~or qualifying residents as defined under California Civil Code Section 51.3.~~*

(D) At least 20 percent of the pre-bonus units in a condominium project will be available for sale to moderate income households.

(2) With respect to “for sale” housing:

(A) Aaffordability shall be determined based on prevailing underwriting standards of mortgage financing available for the development, which shall include a forgivable second, as administered by the Housing Commission. At least 20 percent of the pre-bonus units in the development shall be available to low-income purchasers or at least 50 percent of the pre-bonus units in the development shall be available to senior citizens or qualifying residents as defined under California Civil Code Section 51.3a sales price at which the targeted household can qualify for the purchase of the density bonus unit, utilizing prevailing underwriting

standards of mortgage financing available for the  
development.

(B) Density bonus units shall be owner-occupied at all times.

(3) The ~~affordable~~ density bonus units affordable to low income, very low income residents or senior citizens will ~~shall~~ remain available and affordable as provided in Section 143.0720(b)(1)(A)–(C) for a period of 30 years if an additional development incentive is granted to the applicant as provided in Section 143.0740 or 10 years if an additional development incentive is not granted. If an applicant does not request an additional development incentive, the applicant shall submit a pro forma analysis for the Chief Executive Officer of the Housing Commission to document project feasibility or longer if required by a construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy programs.

(4) The ~~affordable units shall be designated units which are comparable in bedroom mix and amenities to the market-rate units in the development and are dispersed throughout the development~~ The density bonus units affordable to moderate income condominium owners shall remain available and affordable for 10 years, or longer if required by a construction mortgage financing assistance program.

(5) The density bonus units shall be designated units which are comparable in size, bedroom mix and amenities to the market-rate

units in the *development* and are dispersed throughout the *development*.

~~(5)~~(6) Provision shall be made for certification of eligible tenants and purchasers, annual certification of property owner compliance by the Housing Commission, and payment of a monitoring fee, as adjusted from time to time, for monitoring of affordable unit requirements by the Housing Commission.

(7) Where the *applicant* seeks a *density* bonus as provided in Section 143.0740(f) or (g):

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the *density* bonus units are required to remain affordable pursuant to this Division;

(B) Of the children who attend the child care facility, the children of *very low income* households, *low income* households or families of *moderate income* shall equal a percentage that is equal to or greater than the percentage that is equal to or greater than the percentage of *dwelling units* that are required for *very low income* households, *low income* households, or families of *moderate income*.

(8) Any other term necessary to implement the provisions and intent of this Division and state law.

- (c) The applicant shall submit a pro forma analysis to the Housing Commission that documents project feasibility. The analysis also shall include information explaining why the concession or incentive is necessary to meet recognized affordability standards.

**§143.0730 Density Bonus Provisions**

A residential *development* proposal requesting an affordable housing *density* bonus is subject to the following:

- (a) The *development* shall be permitted a *density* bonus of the amount of units requested by the *applicant*, up to a total project dwelling unit count of 125 percent of the units permitted by the *density* regulations of the applicable base zone, for those projects subject to Section 143.0720(b)(1) through (3).
- (b) The *development* shall be permitted a density bonus of the amount of units requested by the *applicant*, up to a total project dwelling unit count of 110 percent of the units permitted by the *density* regulations of the applicable base zone, for those projects subject to Section 143.0720(b)(4).
- ~~(b)~~(c) Where the applicable zone requires that each *lot* be occupied by no more than one dwelling unit, the *development* requires a Site Development Permit. If any deviation from the development regulations of the applicable zone is proposed, a Planned Development Permit is required.
- ~~(e)~~(d) If the ~~*premises*~~*development* is located in two or more zones, the number of ~~dwelling units~~*dwelling units* permitted in the *development* is the sum of the ~~dwelling units~~*dwelling units* permitted in each of the zones. Within the

*development*, the permitted number of dwelling units may be distributed without regard to the zone boundaries.

- ~~(d)~~(e) Where the *development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of ~~dwelling units~~dwelling units permitted on each parcel ~~property~~ is calculated based on the area of that ~~property~~ parcel. Within the *development*, if any portion of the *density* is to be transferred between two or more separate parcels, the regulations of Section 143.0750 apply.
- ~~(e)~~(f) Where the *development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the dwelling units reserved at levels affordable by *low-income households*, ~~or very low-income households~~, or moderate income condominium owners shall be distributed among community planning areas in the same proportion as the total number of dwelling units constructed within the *development*.
- (g) All *density* calculations resulting in fractional units shall be rounded up to the next number.

**§143.0740 Additional Development Incentive or Concessions for Affordable Housing**

~~In accordance with the provisions of Government Code Section 65915, the City may grant a development incentive in addition to the 25 percent density bonus.~~

~~The additional development incentive may consist of the following:~~In addition to the 25 percent density bonus, the *applicant* shall be entitled to, upon request, one of the following *development* incentives or concessions:

- (a) ~~A density bonus of more than 25 percent;~~ A *density* bonus of up to an additional 25 percent; or
- (b) ~~A financial incentive consisting of:~~
- (1) ~~Fee reductions or deferrals as authorized for affordable housing in the Municipal Code; or~~
  - (2) ~~Direct financing assistance from the Housing Commission, Redevelopment Agency, or other public funds, if authorized by the applicable agency on a case-by-case basis, or~~ A deviation from applicable development regulations of the underlying zone, such as setback, parking, lot size, height, or FAR, pursuant to Section 143.0750; or
- (c) ~~A deviation from applicable *development* regulations of the underlying zone pursuant to Section 143.0750.~~ Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing *development* and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned *development* in the area where the proposed housing project will be located; or
- (d) ~~Other regulatory incentives or concessions proposed by the *applicant* or the City that result in identifiable and actual cost reductions; or~~
- (e) ~~Other incentives or concessions that are of equivalent financial value based upon the land cost per dwelling unit.~~



- (f) Where the *applicant* proposes to construct a residential *development* that conforms to the requirements of this Division and includes a child care facility that will be located on the premises of, as a part of, or adjacent to the residential *development*, an additional *density* bonus that is an amount of square fee of residential space that is equal to or greater than the amount of square feet of the child care facility.
- (g) Where the *applicant* proposes to construct a residential *development* that conforms to the requirements of this Division and includes a child care facility that will be located on the premises of, as a part of, or adjacent to the residential *development*, an additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

**§143.0750 ~~Deviation to Allow for Additional Development Incentive~~ Rules for Granting Development Incentive or Concession**

~~An applicant may request a deviation from the applicable development regulations as an additional development incentive for affordable housing pursuant to a Site Development Permit decided in accordance with Process Four provided that the *findings* in Section 126.0504(a) and the supplemental *findings* in Section 126.0504(1) are made.~~

- (a) An application for the incentive or concession pursuant to Section 143.0740 shall be decided in accordance with Process 3.
- (b) The City shall grant the additional concession or incentive unless the decision-maker makes one of the following *findings*, in writing:

- (1) the incentive or concession is not required in order to provide for affordable housing costs as defined in Health and Safety Code section 50052.5, as amended from time to time, or for rents for the targeted units to be set in accordance with Section 3.0720(b)(1)(A) or (B); or
- (2) granting the incentive would have a specific adverse impact, as defined in Government Code section 65589.5(d)(2), as amended from time to time, upon public health and safety or upon the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low-income and moderate income households.

**§143.0760 Deviations from Density Bonus and Affordable Housing Provisions**

- (a) ~~A deviation from the provisions of either Section 143.0730 or Section 143.0740 may be requested in accordance with a Site Development Permit and shall require that the findings in Section 126.0504(m) be made.~~
- (b) ~~Deviations may only be considered as follows:~~
  - (1) ~~An increase in the affordable housing density bonus provisions of Section 143.0730(a) and/or decrease in the affordable housing provisions of Section 143.0740(a), may be granted where the development provides for the inclusion of dwelling units affordable by persons of very low income. The total density bonus shall not~~

result in a *development* containing more than 150 percent of the units permitted by the *density* regulations of the base zone nor shall the affordable housing requirement provide that less than 10 percent of the total *development* be affordable by persons and *families of very low income*.

- (2) — An increase in the affordable housing density bonus provisions of Section 143.0730(a), and/or decrease in the affordable housing provisions of Section 143.0740(a), may be granted where the *development* is located within a census tract where the median household income exceeds 120 percent of the citywide median household income as measured by the most recent U.S. Bureau of Census survey and the *development* provides for the inclusion of dwelling units affordable by persons of *low income*. The total *density* bonus shall not result in a *development* containing more than 150 percent of the units permitted by the *density* regulations of the applicable zone nor shall the affordable housing requirement provide that less than 10 percent of the total *development* be affordable by persons and *families of low income*.

MJL:cdk  
11/20/03  
O-2004-48